IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 7416 of 2004(G)

ID.92/1995 of LABOUR COURT, ERNAKULAM

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PETITIONER:

B.B.PREMU, REVATHY, TOLL GATE ROAD,
PACHALAM, COCHIN 12, PRESENTLY RESIDING AT
K.W.A. QUARTERS, E.K.158, KALOOR, COCHIN 17.

BY ADV. SRI.A.JAYASANKAR
SRI.C.ANIL KUMAR

RESPONDENTS:

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1. LABOUR COURT, ERNAKULAM, COCHIN-14.

2. COCHIN SHIPYARD LIMITED, COCHIN 16
REPRESENTED BY ITS CHAIRMAN AND MANAGING
DIRECTOR.

BY ADV. SRI.M.PATHROSE MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.7416/04

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE DEPOSITION DTD. 15-2-2000 OF THE ENQUIRY OFFICER BEFORE THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE AWARD DTD. 30-04-03 PASSED BY THE FIRST RESPONDENT IN I.D.NO.92/95

/True Copy/

PA to Judge.

KURIAN JOSEPH, J.

W.P. (C). NO. 7416 OF 2004

Dated this the 7th day of September, 2007.

J U D G M E N T

Exhibit P2 Award passed by the Labour Court, Ernakulam in I.D. No. 92/1995 is under challenge.

2. The justifiability of the dismissal of the writ petitioner was the issue referred for adjudication. The Labour Court after elaborate discussion of the evidence on record exercising the power of Section 11A of the Industrial Disputes Act, converted the order of dismissal into one of discharge whereby making the workman eligible to receive the gratuity.

3. Learned counsel for the petitioner submits that the petitioner could not receive even those amounts in view of the peculiar facts and circumstances of his physical and mental condition. After having elaborately heard the counsel on both sides and particularly having regard to the physical and mental condition of the petitioner to which extensive reference is made in the writ petition also, I am of the view that the interest of justice will be met if the following orders are passed, basically following the principles governing Section 11A of the Act.

Though such an order is normally passed by the Labour Court/ Tribunal, in the peculiar facts and circumstances, I do not think that the case should be remitted to the Labour Court for the said purpose. Accordingly, this writ petition is disposed of as follows:

Exhibit P2 Award will stand modified as far as the relief is concerned in the following manner:

1) The writ petitioner-workman shall be paid gratuity on the basis of the wages fixed as on the date of the award. In other words, the fixation shall be made as if he were in service upto the date of the award.

The eligible amounts as above shall be computed and paid by way of demand draft drawn in favour of the petitioner and it shall be paid through the counsel for the writ petitioner, within a period of one month.

KURIAN JOSEPH, JUDGE.

smp